

Background: The nation's 1,600 television stations are converting from traditional analog technology to a digital television format. Digital television (DTV) is a new, more efficient technology for transmitting and receiving broadcast television signals. But DTV signals are not compatible with today's analog TV sets in most American homes. Under the Telecommunications Act of 1996, the amount of spectrum given to television station owners was doubled. The policy rationale for this was to enable the stations to transition US consumers to digital TV without interruption of analog broadcasts. But after ten years of digital TV broadcasts, only a small number of US households have made the switch to DTV, delaying the return of valuable spectrum that could be used by emergency officials and auctioned to offset federal deficit spending.

### **Outstanding DTV Transition Issues**

On February 1, 2006, the House of Representatives voted xxx-xxx to approve the Budget Reconciliation conference report which includes the Digital Television Transition and Public Safety Act (DTV Act). With this final Congressional action setting a date certain for the digital TV transition, the work of implementing the legislation falls mainly in the National Telecommunications and Information Administration. But unresolved in the DTV Act are a number of issues that will determine the success of the investment Americans are making in the transition.

At their first open meeting of the new year, both FCC Commissioners and staff identified the DTV transition as a major priority for 2006. Anticipating the passage of the DTV Act, the Commission reported on the status of the DTV transition to date. Approximately 90% of US TV stations are currently airing digital TV broadcast and approximately 95% of stations have chosen their permanent digital television channel. Completing the task of deciding final channel placements for all digital TV stations was identified as a major priority by FCC Chairman Kevin Martin, Commissioner Jonathon Adelstein and Media Bureau Chief Donna Gregg. Commissioner Adelstein identified additional issues that must be addressed to make the transition a success including the public interest obligations of digital TV broadcasters, the disclosure requirements of licensees, educating consumers about the transition, and the sale of analog TV sets.

### **Public Interest Obligations and Disclosure**

Because of the enhanced capability of digital television technology, the FCC first asked for public comment on the public interest obligations of digital television broadcasters in July 1995.<sup>1</sup> Since that time, a blue-ribbon Presidential advisory committee has reviewed and made recommendations on broadcasters' public interest obligations,<sup>2</sup> while the FCC has opened a proceeding to examine the Advisory Committee's recommendations and initiated a proceeding on the disclosure requirements of broadcasters.<sup>3</sup> Responding in part to this long delay, the FCC's own Consumer Advisory Committee, appointed by FCC Chairman Kevin Martin, asked the Commission to complete these proceedings by May 18, 2006.

In addition, in a February 2005 decision on whether or not to require cable operators to carry all of digital TV stations' multicast channel (see discussion of multicast must carry below), the FCC ruled:

Nothing in this Order diminishes the Commission's commitment to completing action on the multiple open proceedings on localism and on the public interest obligations of digital broadcasters. We believe the public interest and localism proceedings are essential components of the Commission's efforts to complete the transition to digital television. The Commission intends to move forward on these decisions within the next few months and complete action in these dockets by the end of the year.<sup>4</sup>

To date, the Commission has not acted on the public interest obligations of digital broadcasters.<sup>5</sup>

### Consumer Education

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<sup>1</sup> See [http://www.fcc.gov/Bureaus/Mass\\_Media/Notices/1995/fcc95315.txt](http://www.fcc.gov/Bureaus/Mass_Media/Notices/1995/fcc95315.txt)

<sup>2</sup> See *Charting the Digital Future*, the final report of the President's Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters (<http://www.benton.org/publibrary/piac/report.html>).

<sup>3</sup> See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations* (MM 20 Docket No. 00-168; FCC-05-27A1)

<sup>4</sup> Second Report and Order and First Order on Reconsideration *In the Matter of: Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules* (CS Docket No. 98-120) (Adopted February 10, 2005)

<sup>5</sup> For more see *Citizen's Guide to Public Interest Obligations* see <http://www.benton.org/pioguide/publicstandard.html>.

The DTV Act allows the NTIA to spend up to \$5 million educating consumers about the transition to digital TV and the availability of converter box subsidies. An earlier, House version of the DTV Act included a three-part consumer education plan:

- 1) the NTIA and FCC would make public aware of a) the deadline for analog TV broadcasts, b) consumers' options after the deadline and c) the converter box program;
- 2) television set manufacturers would be required to warn analog TV consumers of the coming digital TV transition with warning labels on sets sold in the US; and
- 3) television broadcasters would have to air a PSA campaign while cable and satellite would have to include notices about the transition in their monthly bills.

These provisions were dropped in the final version of the DTV Act, but FCC Commissioner Adelstein and Media Bureau Chief Gregg admitted there's lots more to be done to alert consumers about the coming end of analog TV. The FCC's current educational campaign has an online home at <http://www.dtv.gov/>

### DTV Tuner Requirement

In early November 2005, the FCC set March 1, 2007 as the date for which all TV receivers sold in the US must include the capability to receive digital television.<sup>6</sup> But in the same order the FCC highlighted that consumer awareness of whether a television can receive off-the-air DTV signals or only off-the-air analog signals is critical to ensuring that consumer expectations are met. The Commission promised to move swiftly to address point-of-sale consumer education saying that it would further consumer education if manufacturers and retailers would provide marketing information to consumers and/or clearly label new television sets. In the interim, the FCC encouraged manufacturers and retailers to clearly label and identify the tuning capabilities of new TV sets regarding whether or not specific models are able to receive off-the-air digital television signals.

### Digital Television and Cable

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<sup>6</sup> On July 1, 2004, the tuner requirement was applied to 50% of large sets (screen sizes 36" and larger), and last July (July 1, 2005), the tuner requirement was applied to all large sets and to 50% of mid-size sets (25"- 36"). Beginning March 1, 2006, DTV tuners will be required in all mid-size sets as well.

Congress expects that the February 17, 2009, firm deadline will have little impact on most television households. Only consumers relying on over-the-air broadcasts should need to participate in the converter-box program and just under 15% of US television households relied exclusively on over-the-air transmission as of June 2004, according to the FCC. By contrast, the FCC reports that 92.3 million households, representing just over 85%, subscribed to cable or satellite TV. But pay TV subscribership may raise as many issues as it may solve, at least for viewers of smaller broadcast stations.<sup>7</sup>

The House version of the DTV Act included extensive provisions allowing for cable and satellite operators to convert broadcasters' digital TV signals to analog signals. These provisions, however, were stripped from the bill before final passage.

The National Cable & Telecommunications Association, cable's lobbying organization, sees the DTV transition affecting cable customers who have sets that are not hooked up to set-top boxes. The downconversion language in the House bill would have allowed cable operators (after the transition) to carry an analog TV signal "in lieu of" a digital one. The purpose of this was to help out the millions of consumers who won't have a digital TV when the transaction occurs.

The cable industry believes that as a result of the downconversion language not being included in the legislation, cable operators have the option to: 1) carry only stations' digital broadcast signals or 2) carry a downconverted analog signal in addition to the digital signal. If cable operators choose to carry only the digital broadcast signal, and not a second analog signal, local broadcasters will potentially lose market share because their signal will not be viewed on TVs that don't have a set-top box.

The National Association of Broadcasters hailed the outcome on Capitol Hill. The NAB's position throughout had been that degradation of digital-TV signals should be done by the consumer, not the cable company.

Moreover, the NAB has identified multicast must carry as its number one policy priority. In an order noted above, the FCC voted 4-1 last February to ban TV stations from demanding cable carriage of

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<sup>7</sup> Major network affiliates likely have retransmission consent agreements with cable operators already.

multiple DTV services, affirming a 2001 ruling that cable is obligated to carry just one service per station and nothing else after broadcasters complete their transition to digital-only transmission. The FCC also voted 5-0 that cable does not have to carry both analog and digital services of local TV stations during the transition. In the 4-1 vote, only then-Commissioner Kevin Martin dissented saying the decision provided no incentive for broadcasters to invest in and develop local news, local weather, local sports, coverage of local elections and government proceedings, and foreign language programming because they would not be guaranteed coverage on local cable systems. In addition to now-Chairman Martin, two commissioners indicated their votes could have been reversed – if the Commission had first addressed the public interest obligations of digital TV broadcasters.

In April 2005, the National Association of Broadcasters asked the FCC to reconsider the February 2005 decision.<sup>8</sup> No action has been taken yet. But it is important to note that two different FCC's and now Congress have rejected a multicasting mandate.

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<sup>8</sup> See <http://www.nab.org/newsroom/pressrel/filings/ReconPetitionCarriage42105.pdf>